

INITIAL DISCUSSION FOR ISSUE PAPER

Proposed Regulatory Changes Regarding the Issuance of an Exemption Certificate to a Fuel Vendor for Sales/Use Tax Paid on Federal Excise Taxes

Regulation 1598, Motor Vehicle and Aircraft Fuels; Regulation 1617, Federal Taxes

Issue

Should Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1617, *Federal Taxes*, be amended as a result of the passage of Assembly Bill 2894?

Background

During the 2000 Legislative Session, the Legislature adopted Assembly Bill (AB) 2894, Chapter 923, Statutes 2000, adding Revenue and Taxation Code (RTC) section 6245.5 and amending RTC sections 6011 and 6012. RTC section 6245.5 allows a purchaser to issue an exemption certificate to a fuel vendor for an amount equal to the sales or use tax on the federal manufacturers' or importers' excise tax imposed on his or her qualifying and nonqualifying purchases under specified circumstances.

The sales and use tax on federal excise taxes relating to fuel is explained in Regulations 1598 and 1617. Regulation 1598 (previously Ruling 1325, effective 1/15/71), interprets and makes specific various sales and use tax provisions relating to motor vehicle and aircraft fuels. Regulation 1617 (previously Ruling 57, effective 7/1/43), interprets and explains when certain taxes levied by the federal government are includable in gross receipts or the sales price of tangible personal property. Both regulations are interpretations of RTC sections 6011, "*Sales price*," and 6012, "*Gross receipts*."

In 1988, AB 884 amended RTC sections 6011 and 6012 to provide that the sales price and gross receipts of diesel and jet fuel do not include the amount of manufacturers' or importers' excise tax imposed pursuant to Internal Revenue Code (IRC) section 4091 when the purchaser certifies in writing that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. An example of an exemption certificate was added to Regulation 1598(h) to provide guidance in the preparation of the required certificate by which the purchaser claims an exclusion from the sales or use tax on the amount of the federal excise tax. AB 884 also added RTC section 6423, which provides the consequences for improper certification.

In 1994, Senate Bill 840 (Ch. 912, Stats 1994) amended RTC sections 6011 and 6012 to provide that gross receipts do not include the diesel fuel tax nor the amount of manufacturers' or importers' excise tax imposed pursuant to IRC section 4081, for gasoline and diesel fuel, which has been directly refunded or credited against income tax. This amendment was operative July 1, 1995.

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Current Application of Tax

Under current law, the amount of any federal manufacturers' or importers' excise tax imposed pursuant to IRC sections 4081 and 4091 for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid, is excludable from the measure of sales and use tax. An exemption certificate can be issued only when purchasing qualifying fuel (fuel for which the purchaser expects to use in a manner exempt from the federal excise tax). Thus, the purchaser may not issue an exemption certificate when a purchaser purchases fuel in bulk if only a portion of the fuel will qualify for the exemption. Consequently, the purchaser is required to pay sales tax reimbursement or use tax on the entire purchase, including that portion consisting of the federal excise tax for which the purchaser later obtains a refund from the Internal Revenue Service (IRS). Then, a claim for refund of the overpaid sales or use tax on the amount of the federal excise tax may be filed.

Claims for Refund

The claim for refund of the overpaid sales or use tax must be supported by proof of the exempt use of the fuel (as for example, off-road use) and by the refund or credit of the federal excise tax by the IRS to the purchaser. When the applicable tax is sales tax, it is the vendor who must file the claim for refund, and then refund the amount of the excess sales tax reimbursement collected from the purchaser upon refund of the overpaid sales tax to the vendor.

Need for Revision

Several construction and utility companies who purchase qualifying and nonqualifying fuel in bulk purchases have expressed concern over the lengthy process currently required to receive credit for the sales tax reimbursement remitted to their fuel vendors on their purchases of fuel qualifying for an exemption from the federal manufacturers' or importers' excise tax. The process is especially long, since, in order for a refund to be processed by the Board, the purchaser must first file for a refund or credit for the excise tax paid with the IRS and obtain the refund or credit. When the original sale was subject to sales tax, the purchaser must then show proof to his or her vendor of the credit or refund obtained, and then request the vendor to file a claim for refund with the Board. The vendor, in turn, must then file the claim for refund with the Board on behalf of the purchaser, provide proof to the Board that the purchaser obtained a credit or refund from the IRS, and provide proof that the fuel was used in an exempt manner. It can take several months from the time the purchaser remitted the tax reimbursement to his or her vendor until the time the claim can be filed with the Board. Although the Board had developed a procedure to rapidly process these claims, it still takes an average of over a year from the time of payment of the sales tax reimbursement until that reimbursement is refunded to the purchaser. Fuel purchasers have also indicated that it is difficult to issue an exemption certificate to the fuel vendor for only that portion of the fuel purchase that will qualify for a refund of the federal excise tax.

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Discussion of Section 6245.5

After meetings with industry, Board staff agreed that a more liberal use of exemption certificates would further the administration of tax as well as help taxpayers. Staff therefore drafted language that would provide a statutory basis for such a procedure, and the Board sponsored the staff proposal. This was adopted by AB 2894 which created RTC section 6245.5. This provision enables the purchaser to issue an exemption certificate to the fuel vendor for an amount equal to the sales or use tax on the federal manufacturers' or importers' excise tax imposed on his or her entire fuel purchase when purchasing both qualifying and nonqualifying fuel if at least 50 percent of his or her fuel purchase qualifies for the exemption from federal excise tax. In addition, the purchaser is required to have a seller's permit and is also required to self report any tax due for fuel purchased under an exemption certificate. This section eliminates the need for many fuel purchasers to go through the lengthy refund process and would instead simply allow the qualified purchaser to purchase the fuel without payment of the sales or use taxes on the federal excise taxes included in the price of the fuel purchased. RTC section 6245.5, which is effective 1/1/2001, states the following:

6245.5. **“Exemption certificate – fuel purchases.”** (a) A person qualified under subdivision (b) may issue a certificate to a retailer with respect to the amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 when purchasing fuel from the retailer.

(b) A person is qualified for purposes of this section if all of the following conditions are met:

(1) The person was entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel during the prior calendar year.

(2) The person's business remains substantially the same as during the prior calendar year whereby the person expects to be entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel.

(3) The person holds a valid California seller's permit.

(c) A person issuing a certificate for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 is liable for use tax on the amount of the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code if the person used fuel purchased under the certificate in a manner

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whereby the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.

(d) A person liable for the use tax under subdivision (c) of this section shall report and pay that use tax with the return for the reporting period in which the person uses the fuel in such a manner that the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.

Staff has drafted the necessary amendments to Regulations 1598 and 1617 to incorporate the provisions of RTC section 6245.5. The proposed amendment to Regulation 1598 includes an example of the exemption certificate required to be issued by the purchaser. See Exhibits 1 and 2.

Summary

The proposed amendments to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1617, *Federal Taxes*, incorporate the new provisions of RTC section 6245.5, “*Exemption certificates – fuel purchases.*” The amendments explain that the purchaser is entitled to issue an exemption certificate to the fuel vendor for an amount equal to the sales or use tax on the federal manufacturers’ or importers’ excise tax imposed on his or her entire fuel purchase when purchasing both qualifying and nonqualifying fuel under specified circumstances. This provision will eliminate the need to file a claim for refund for the overpaid sales or use tax on the amount of federal excise tax paid to the vendor, when an exemption certificate is used in accordance with the requirements of the statute and regulations.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of 12/6/2000

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Regulation 1598. Motor Vehicle and Aircraft Fuels.

Reference: Sections 6011, 6012, 6245.5, 6357, 6357.5, 6385, 6423, Revenue and Taxation Code.

(a) IN GENERAL. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) EXCEPTIONS.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subparagraph subdivision (g) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) MEASURE OF TAX.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E) below,

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

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4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.
5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.
4. Special motor fuels.

(D) Prior to July 1, 1995, the federal ~~importer's or producer's~~ excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See ~~subparagraph subdivision~~ subdivision (h) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal ~~importer's or producer's~~ excise tax imposed pursuant to Sections 4081 ~~and or~~ 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See ~~subparagraph subdivision~~ subdivision (h) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (i).

(d) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

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Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes.....	\$1.153
	Federal excise tax *.....	.184
	State excise tax*.....	.180
	Total	\$1.517
	* Sales tax reimbursement computed at 7 1/4%* of \$1.517...	.110
	Total tax-included price per gallon.....	\$1.627
(B)	Sales price per gallon of diesel fuel net of all taxes.....	\$1.103
	Federal excise tax*.....	.244
	Total	\$1.347
	* Sales tax reimbursement computed at 7 1/4%* of \$1.347..	.098
	State excise tax *.....	.180
	Total tax-included price per gallon.....	\$1.625

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(e) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and Regulation 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and regulation-1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under ~~Regulation~~ Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

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(f) REFUNDS OF EXCISE TAX.

(1) FEDERAL EXCISE TAXES.

The refund of the federal ~~importer's or producer's~~ excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) SALES OR USE TAX REFUNDS. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(g) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under ~~subparagraph subdivision (b)(1), above,~~ shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (g)(2) below. If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the aircraft fuel (gasoline) which I shall purchase from _____,

_____ will be used in propelling aircraft and, at the time of the purchase, is exempt from tax pursuant to Section 6357 of the Sales and Use Tax Law.

In the event that any of this fuel (gasoline) is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel.

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~~Dated~~
~~Purchaser~~
~~.....(Signature of Purchaser).....~~
~~Address~~
~~Seller's Permit No. (if any)~~

Purchaser: _____
(Company Name)

Address: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Vehicles/Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____

(h) CERTIFICATE FOR EXCLUSION OF IMPORTER'S OR PRODUCER'S FEDERAL EXCISE TAXES FROM MEASURE OF TAX. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subparagraph subdivision (c)(2)(D) or (c)(2)(E) above shall secure from the purchaser and retain a certificate in substantially the form prescribed in subparagraph subdivision (h)(1) below.

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser.

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I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 ~~by the importer or producer of~~ for the gasoline/diesel/jet fuel I shall purchase from _____

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount.

~~Dated~~~~Purchaser~~~~(Signature of Purchaser)~~~~Address~~

Purchaser: _____

(Company Name)

Address: _____

Signature: _____

(Signature of Authorized Agent)

Date: _____

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Vehicles/Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (h)(1) above and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

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(i) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who satisfies the requirements of subdivision (i)(1) may issue a certificate in substantially the form set forth in subdivision (i)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser.

(1) A purchaser may issue a certificate under this subdivision if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of fuel during the prior calendar year.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of fuel.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

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(3) A certificate issued under this subdivision shall be in substantially the following form:

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of fuel during the prior calendar year.

2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of fuel.

3. I hold a valid California seller's permit, the number for which is set forth below.

4. With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used.

Purchaser:

(Company Name)

Address:

Signature:

Date:

(Signature of Authorized Agent)

Title:

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No.:

Identification Numbers of Vehicles/Aircraft Owned or Operated

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Regulation 1617.**Federal Taxes.**

Reference: Sections 6011, 6012, 6245.5, 6423, Revenue and Taxation Code. 19 U.S.C. Section 1505(a), 19 CFR Section 141.1(b).

(a) RETAILERS' EXCISE TAXES. Gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of any federal tax imposed upon or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether the amount of federal tax is stated to the consumer as a separate charge.

Retailers must retain records to show that the amounts deducted as federal tax have been returned to the United States or will be returned to the United States.

(b) MANUFACTURERS' OR IMPORTERS' EXCISE TAXES.

(1) Except as indicated in subdivisions (b)(2) and (b)(3), ~~below~~ gross receipts subject to sales tax and the sales price subject to use tax include the amount of any manufacturers' or importers' excise tax included in the prices of the property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether or not the amount of such tax is stated as a separate charge.

(2) Prior to July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of ~~manufacturers' or importers' the federal~~ excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel ~~and or~~ jet fuel for which the purchaser ~~certifies that he or she is entitled to obtains~~ either a direct refund or credit against his or her income tax ~~for the federal excise tax paid. Certification must be in substantially the form prescribed in Regulation 1598(h)(1).~~

(3) Beginning July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the federal ~~importers' or producers'~~ excise tax imposed pursuant to Sections 4081 ~~and or~~ 4091 of the Internal Revenue Code with respect to gasoline, diesel, ~~and or~~ jet fuels for which the purchaser ~~certifies that he or she is entitled to obtains~~ either a direct refund or credit against his or her income tax ~~for the federal excise tax paid. Certification must be in substantially the form prescribed in Regulation 1598(h)(1).~~

(c) IMPORT DUTIES. Import duties are imposed by federal statute (19 U.S.C. Section 1505(a)) on the importer of record. If the importer of record is a consignee and the consignee is the seller, import duties included in the price of the property sold are subject to sales and use tax. If the importer of record is a consignee and the consignee is the buyer, such duties are excludable from the sales price subject to use tax.

(d) REPEAL OR REDUCTION OF FEDERAL TAXES.

(1) IN GENERAL--INSTALLMENT PAYMENTS. When an article subject to a federal excise tax prior to the date such tax is repealed or reduced is sold under an agreement calling

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for payment of the sales price in installments, payments made on or after the repeal or reduction date will be considered as if they were made with respect to an article sold on or after the repeal or reduction date if the vendor establishes that the amount of payments due on or after such date were reduced by an amount equal to the tax reduction.

(2) **RETAILERS' EXCISE TAXES COLLECTED AFTER REPEAL.** Amounts collected by a retailer as federal retailers' excise tax after the tax has been repealed, but neither paid by the retailer to the Internal Revenue Service nor refunded to its customers, constitute gross receipts subject to sales tax.

(e) REFUNDS OF FEDERAL TAXES.

(1) **REPAYMENT BY MANUFACTURER TO RETAILER.** When a manufacturer receives a refund of federal excise tax and repays the amount of the tax to the retailer pursuant to requirements of federal law, the repayment will be regarded for sales and use tax purposes as a reduction of the retailer's cost of goods sold.

(2) **REPAYMENT TO CONSUMER.** When a manufacturer receives a refund of federal manufacturers' excise tax and repays the amount of the tax to the consumer either directly or through the retailer pursuant to requirements of federal law, the repayment to the consumer will be regarded for sales and use tax purposes as a price adjustment. Taxable gross receipts of the retailer for the period in which the repayment is made to the consumer will be reduced accordingly, and sales tax previously paid by the retailer on the amount will be refunded to the retailer, provided the amount collected from the consumer as sales tax reimbursement is also refunded to him or her.

(3) **REFUNDS ON GASOLINE, DIESEL OR JET FUEL.** The refund of the federal ~~importer's or manufacturer's excise tax impose by Section 4081 or 4091 of the Internal Revenue Code with respect to~~ gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel may file with the board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel or jet fuel and of the refund or credit of the federal excise tax to the purchaser.